

Senate/ House Bill No.

(By Senators / Delegates)

(By Request of the Executive)

[Introduced; referred to the Committee on]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24, §22-30-25, §22-30-26, §22-30-27, and §22-30-28, all relating to the protection of source water supplies and systems generally through regulation of industrial aboveground storage tanks; short title; applicability; legislative findings and purposes; defining terms; authorizing a source water protection program; requiring public water systems to remit an annual fee and submit a source water protection plan for joint approval by the secretary of the department of environmental protection (DEP) and the secretary of the department of health and human resources (DHHR) every three years; permitting the secretary of DEP to request studies from public water systems regarding

1 potential contaminant sources; providing emergency and
2 legislative rule-making authority to the secretary to adopt
3 and implement an industrial aboveground storage tank program;
4 setting forth powers and duties of the secretary to implement
5 an industrial aboveground storage tank program; setting forth
6 notification requirements for owners and operators of
7 industrial aboveground storage tanks; providing emergency and
8 legislative rule-making authority; setting forth registration
9 requirements, including an annual registration fee, for
10 industrial aboveground storage tanks; prohibiting the
11 operation or use of an unregistered industrial aboveground
12 storage tank; prohibiting the delivery or deposit of regulated
13 material into an unregistered industrial aboveground storage
14 tank; requiring annual inspection and certification by a
15 registered professional engineer of minimum safety standards
16 for industrial aboveground storage tanks, associated
17 equipment, leak detection systems, and secondary containment
18 structures; providing rule-making authority to ensure
19 financial responsibility for corrective action for releases of
20 regulated material from industrial aboveground storage tanks;
21 providing rule-making authority for performance standards for
22 new and existing industrial aboveground storage tanks;
23 authorizing the secretary to ensure corrective action be taken
24 regarding a release or threatened release of regulated
25 material from an industrial aboveground storage tank;
26 permitting the secretary to use funds from the Leaking

1 Industrial Aboveground Storage Tank Response Fund to pay for
2 the costs of corrective action to prevent contamination of a
3 source water supply; requiring written notice from the
4 secretary to a responsible party regarding liability for
5 reimbursement to the Leaking Industrial Aboveground Storage
6 Tank Response Fund; requiring spill prevention response plans
7 for each industrial aboveground storage tank to be submitted
8 for approval by the secretary; requiring owners or operators
9 of industrial aboveground storage tanks to provide public
10 notice to certain public water systems, the local
11 municipality, and the local county regarding regulated
12 material; requiring signage on industrial aboveground storage
13 tanks; providing rule-making authority; creating a special
14 revenue fund entitled the Industrial Aboveground Storage Tank
15 Administrative Fund and authorizing the secretary to collect
16 an annual registration fee for deposit into this fund;
17 creating a special revenue fund entitled the Leaking
18 Industrial Aboveground Storage Tank Response Fund and
19 authorizing the secretary to collect an annual fee for deposit
20 into this fund; authorizing expenditures from the funds;
21 providing public access to information collected under this
22 article pursuant to the Freedom of Information Act; permitting
23 the secretary to require the owners or operators of industrial
24 aboveground storage tanks to furnish information, conduct
25 reasonable monitoring or testing, and allow access to records
26 to facilitate implementation of the provisions of this

1 article; permitting the secretary to issue orders to enforce
2 this article, including temporary and permanent injunctions;
3 providing for civil and criminal penalties; providing for
4 appeals to the environmental quality board; prohibiting
5 duplicative enforcement; requiring the secretary to report to
6 the legislature every three years on the effectiveness of this
7 article and annually on the accounting of the funds; requiring
8 interagency coordination; permitting the secretary to bring a
9 civil action against an owner or operator of an industrial
10 aboveground storage tank upon receipt of evidence of imminent
11 and substantial endangerment to human health or the
12 environment; providing for immediate notice to appropriate
13 state and local agencies and public water systems; and
14 severability.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new article, designated §22-30-1, §22-30-2,
18 §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-
19 9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-
20 15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-
21 21, §22-30-22, §22-30-23, §22-30-24, §22-30-25, §22-30-26, §22-30-
22 27, and §22-30-28, all to read as follows:

23 **Chapter 22. ENVIRONMENTAL RESOURCES**

24 **ARTICLE 30. WEST VIRGINIA SOURCE WATER PROTECTION ACT.**

25 **§22-30-1. Short title.**

1 This article shall be known and may be cited as the "West
2 Virginia Source Water Protection Act."

3 **§22-30-2. Applicability.**

4 This article shall apply to all new and existing industrial
5 aboveground storage tanks located within a zone of critical concern
6 and to all public water systems located within the state.

7 **§22-30-3. Legislative findings and purpose.**

8 (a) The Legislature recognizes that industrial businesses are
9 vital to our economy, create good-paying jobs with benefits for our
10 citizens, and ensure that commerce will continue to flourish in
11 West Virginia. The Legislature also recognizes that many factors
12 go into an industrial facility's selection of a site to do
13 business, including, but not limited to, topography, proximity to
14 workforce, access to necessary infrastructure, access to
15 transportation modalities such as railroads, rivers and highways,
16 a state's regulatory environment, and proximity to raw materials.
17 In connection with the operation of industrial businesses, it is
18 often necessary to store large quantities of petroleum, chemicals,
19 solvents, and other hazardous substances and pollutants in
20 aboveground storage tanks. Recognizing the value that industrial
21 businesses add to our economy and the associated risks of potential
22 harm to human health and the environment posed by storage of
23 significant quantities of regulated material in aboveground storage
24 tanks, the Legislature finds it is necessary to regulate the
25 industrial storage of regulated material in aboveground storage
26 tanks located within zones of critical concern in the vicinity of

1 public water systems. Further, the Legislature finds that it is
2 also necessary to require public water systems to evaluate
3 potential risks to the water supply and to develop certain
4 contingency and emergency response plans to prepare for potential
5 releases of regulated material from industrial aboveground storage
6 tanks that jeopardize a public water system, human health, or the
7 environment.

8 (b) Therefore, it is the purpose of this article to:

9 (1) implement reasonable regulations governing the storage of
10 specified volumes of regulated material in industrial aboveground
11 storage tanks within zones of critical concern in the vicinity of
12 public water systems;

13 (2) assure that industrial aboveground storage tanks are
14 constructed and maintained in a manner consistent with acceptable
15 industry safety standards;

16 (3) assure that public water systems properly plan for
17 contingencies and prepare appropriate emergency response plans to
18 implement in the event a leak from an industrial aboveground
19 storage tank jeopardizes one or more public water systems; and

20 (4) otherwise protect human health and the environment from
21 the dangers posed by the storage of specified volumes of regulated
22 material in industrial aboveground storage tanks located within
23 zones of critical concern in the vicinity of public water systems.

24 **§22-30-4. Definitions.**

25 As used in this article, unless the context clearly requires
26 a different meaning, the term:

1 (a) "Aboveground storage tank" means a single stationary
2 aboveground container or a set of stationary aboveground containers
3 that are connected in such a manner that the contents thereof can
4 travel between containers. The term includes all ancillary
5 aboveground pipes and dispensing systems up to the first point of
6 isolation and all ancillary underground pipes and dispensing
7 systems connected to the aboveground containers. The term does not
8 include, however, any of the following:

9 (1) Farm or residential tanks with a capacity of 1,100
10 gallons or less that are used for storing motor fuel for
11 noncommercial purposes;

12 (2) Tanks used for storing heating oil for consumptive use on
13 the premises where stored;

14 (3) Septic tanks;

15 (4) A pipeline facility, including gathering lines, regulated
16 under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous
17 Liquid Pipeline Safety Act of 1979, or an intrastate pipeline
18 facility regulated by the West Virginia public service commission
19 or otherwise regulated under any state law comparable to the
20 provisions of either the Natural Gas Pipeline Safety Act of 1968 or
21 the Hazardous Liquid Pipeline Safety Act of 1979;

22 (5) Liquid traps or associated gathering lines related to oil
23 or gas production and gathering operations;

24 (6) Surface impoundments, pits, ponds or lagoons;

25 (7) Stormwater or wastewater collection systems;

26 (8) Flow-through process tanks;

1 (9) Tanks used for the storage of products that are regulated
2 pursuant to the federal Food, Drug, and Cosmetic Act;

3 (10) Oil filled tanks regulated under section 1321 of the
4 federal Water Pollution Control Act (section 311 of the federal
5 Clean Water Act) and the regulations promulgated thereunder, 40
6 C.F.R. § 112, *et seq.*;

7 (11) Farm tanks with a capacity of 1,100 gallons or less used
8 solely to store or contain substances that are used to facilitate
9 the production of crops, livestock, and livestock products on such
10 farm;

11 (12) Tanks that are used to store propane gas;

12 (13) Tanks that are mobile in nature or that do not remain in
13 one location for more than thirty consecutive calendar days;

14 (14) Storage tank systems storing hazardous wastes regulated
15 under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C.
16 § 6921, *et seq.*, or substances regulated under the West Virginia
17 Hazardous Waste Management Act, W. Va. Code § 22-18-1, *et seq.*;

18 (15) Tanks otherwise regulated under those provisions of this
19 chapter that necessitate individual site-specific permits that
20 require appropriate containment and diversionary structures or
21 equipment to prevent discharged materials from reaching the waters
22 of the state, including:

23 (A) Tanks regulated under the Surface Coal Mining and
24 Reclamation Act, article three of this chapter;

25 (B) Tanks that are used to store brines, crude oil, or any
26 other liquid or similar substances or materials that are directly

1 related to the exploration, development, stimulation, completion,
2 or production of crude oil or natural gas regulated under article
3 six or article six-a of this chapter;

4 (C) Tanks that are located at establishments that have
5 individual permits issued under the National Pollutant Discharge
6 Elimination System, article eleven of this chapter; and

7 (D) Tanks regulated under the Solid Waste Management Act,
8 article fifteen of this chapter, including, but not limited to,
9 piping, tanks, collection, and treatment systems used for leachate,
10 methane gas, and methane gas condensate management.

11 (16) Any other tank excluded by legislative rule promulgated
12 by the secretary pursuant to this article and article three,
13 chapter twenty-nine-a of this code.

14 (b) "Change in status" means an instance in which the
15 reported uses, contents, or ownership of an industrial aboveground
16 storage tank changes, including discontinuing the use of an
17 industrial aboveground storage tank.

18 (c) "Industrial aboveground storage tank" means an aboveground
19 storage tank located within a zone of critical concern that
20 contains a volume of regulated material in excess of the applicable
21 threshold established by the secretary by rule pursuant to section
22 six of this article.

23 (d) "Nonoperational storage tank" means an aboveground
24 storage tank in which regulated material will not be deposited or
25 from which regulated material will not be dispensed on or after the
26 effective date of this article.

1 (e) "Operator" means any person in control of or having
2 responsibility for the daily operation of an industrial aboveground
3 storage tank.

4 (f) "Owner" means a person who holds title to, owns or
5 controls an industrial aboveground storage tank. "Owner" does not
6 include any person who holds indicia of ownership of an industrial
7 aboveground storage tank only for the purpose of protecting the
8 person's security interest in the industrial aboveground storage
9 tank.

10 (g) "Person" means any individual, trust, firm, joint stock
11 company, corporation (including government corporations), limited
12 liability company, partnership, association, state, municipality,
13 commission, political subdivision of a state, interstate body,
14 consortium, joint venture, commercial entity and the United States
15 government.

16 (h) "Public water system" means the same in this article as
17 set forth in subsection (p), section two, article one, chapter
18 sixteen of this code.

19 (i) "Regulated material" means each substance having a health
20 hazard of two, three or four, as set forth on the material safety
21 data sheet (MSDS) applicable to each such substance, or any other
22 substance as determined by the National Fire Protection Association
23 or the secretary.

24 (j) "Release" means any spilling, leaking, emitting,
25 discharging, escaping, leaching or disposing of a regulated
26 material from an industrial aboveground storage tank into

1 groundwater, surface water or subsurface soils within a zone of
2 critical concern. The term shall also include spilling, leaking,
3 emitting, discharging, escaping, leaching or disposing of a
4 regulated material from an industrial aboveground storage tank into
5 a containment structure or facility that poses an immediate threat
6 of contamination of the soils, subsurface soils, surface water or
7 groundwater within a zone of critical concern.

8 (k) "Secondary containment" means an additional layer of
9 impervious material creating a space in which a release of a
10 regulated material from an industrial aboveground storage tank may
11 be detected before it enters the environment.

12 (l) "Secretary" means the cabinet secretary of the department
13 of environmental protection as designated in article one of this
14 chapter or his or her designee.

15 (m) "Zone of critical concern" means those areas identified
16 as a zone of critical concern in a Source Water Assessment Report,
17 as determined as of the effective date of this article by the
18 department of health and human resources in conjunction with the
19 State of West Virginia Source Water Assessment and Protection
20 Program, as such areas may be revised and as additional areas, if
21 any, may be added from time to time by promulgation of emergency
22 and legislative rule by the secretary in accordance with article
23 three, chapter twenty-nine-a of this code.

24 **§22-30-5. Source water protection.**

25 (a) In addition to all other powers and duties prescribed in
26 this chapter or otherwise by law, and unless otherwise specifically

1 set forth in this article, the secretary has the sole and exclusive
2 authority to perform any and all acts necessary to implement a
3 source water protection program designed to protect each public
4 water system in the state from contamination of its source water
5 supply caused by the release of regulated material from an
6 industrial aboveground storage tank consistent with the
7 requirements of this article.

8 (b) Within ninety days of the effective date of this article,
9 each existing public water system shall remit an annual fee in an
10 amount to be specified in an emergency and legislative rule
11 promulgated by the secretary pursuant to this article to be
12 deposited into the Industrial Aboveground Storage Tank
13 Administrative Fund created pursuant to this article and submit a
14 source water protection plan to protect its system from
15 contamination of its source water supply caused by release of
16 regulated material from an industrial aboveground storage tank,
17 which plan, at a minimum, shall include the following:

18 (1) A contingency plan that documents each public water
19 system's planned response to contamination of the source water
20 supply;

21 (2) Information pertaining to alternative water sources
22 focusing on long-term source replacement should such system be
23 required to develop a new source of water due to such
24 contamination;

25 (3) A management plan that identifies specific activities
26 that will be pursued by such system to protect its source water

1 supply from such contamination, including coordination with
2 government agencies and periodic surveys of the zone of critical
3 concern related to such system; and

4 (4) A communications plan that documents the manner in which
5 the public shall be notified of information related to any
6 contamination of the source water supply.

7 (c) Any public water system that comes into existence on or
8 after the effective date of this article shall submit prior to the
9 commencement of its operations a source water protection plan
10 satisfying the requirements of subsection (a) of this section.

11 (d) The secretary and the secretary of the department of
12 health and human resources shall jointly approve any plan submitted
13 pursuant to this section or reject the plan and require such
14 modifications as may be necessary and reasonable to satisfy the
15 purposes of this article. Failure by a public water system to
16 comply with a plan approved pursuant to this section shall
17 constitute a violation of this article.

18 (e) The secretary may request a public water system to
19 conduct one or more studies to determine the actual risk and
20 consequences related to any potential contaminant sources
21 identified by the secretary.

22 (f) A public water system shall submit an updated source
23 water protection plan not less frequently than every three years.

24 **§22-30-6. Promulgation of rules and standards by the secretary.**

25 (a) The secretary shall promulgate emergency and legislative
26 rules in accordance with article three, chapter twenty-nine-a of

1 this code as may be necessary for the effective implementation and
2 administration of this article.

3 (b) As part of the emergency and legislative rules authorized
4 by subsection a of this section, the secretary shall promulgate
5 emergency and legislative rules in accordance with article three,
6 chapter twenty-nine-a of this code to adopt and implement an
7 industrial aboveground storage tank program that, at a minimum,
8 includes the following subjects:

9 (1) Payment of an annual registration fee to the department of
10 environmental protection by the owner or operator of each
11 industrial aboveground storage tank;

12 (2) Registration with the secretary of each industrial
13 aboveground storage tank and the filing of an annual report with
14 the secretary by the owner or operator of each industrial
15 aboveground storage tank regarding changes in status of any such
16 tank;

17 (3) Methods and procedures for inventory control measures, as
18 appropriate;

19 (4) The periodic inspection of leak detection systems, the
20 structural integrity of industrial aboveground storage tanks and
21 associated equipment, and release prevention measures;

22 (5) Corrective actions by owners, operators, or other
23 responsible parties, as applicable, in response to a release of a
24 regulated material from an industrial aboveground storage tank;

25 (6) The reporting of any release of a regulated material from
26 an industrial aboveground storage tank and corrective action taken

1 in response to a release of a regulated material from an industrial
2 aboveground storage tank;

3 (7) The maintenance of records, by owners or operators, as
4 applicable, of periodic inspections of leak detection systems;
5 inspections of structural integrity of the industrial aboveground
6 storage tanks, their associated equipment, and secondary
7 containment systems; and all release prevention measures as may be
8 necessary to protect human health and the environment from
9 contamination of a source water supply used by a public water
10 system caused by a release of a regulated material from an
11 industrial aboveground storage tank;

12 (8) Minimum standards for the construction, testing, corrosion
13 protection, maintenance, operation, release prevention, and repair
14 and reuse of industrial aboveground storage tanks, their associated
15 equipment, and leak detection systems as may be necessary to
16 protect human health or the environment;

17 (9) Methods and procedures for the removal of industrial
18 aboveground storage tanks from service;

19 (10) Requirements for reporting of the planned and completed
20 closure of any industrial aboveground storage tank;

21 (11) Procedures and amount of fees to be assessed for the
22 Industrial Aboveground Storage Tank Administrative Fund and the
23 Leaking Industrial Aboveground Storage Tank Response Fund
24 established pursuant to this article, which shall include a
25 capitalization fee to be assessed against all owners or operators
26 of industrial aboveground storage tanks to be used for initial

1 establishment of the Industrial Aboveground Storage Tank
2 Administrative Fund and the Leaking Industrial Aboveground Storage
3 Tank Response Fund;

4 (12) Procedures for making expenditures from the Industrial
5 Aboveground Storage Tank Administrative Fund and the Leaking
6 Industrial Aboveground Storage Tank Response Fund;

7 (13) Acceptable methods by which an owner or operator may
8 demonstrate financial responsibility;

9 (14) Procedures establishing when and how the secretary
10 determines if information obtained by the department under this
11 article is confidential;

12 (15) Standards of performance for new and existing industrial
13 aboveground storage tanks;

14 (16) Minimum standards for the construction, testing,
15 operation, maintenance, and repair of secondary containment
16 structures associated with industrial aboveground storage tanks, as
17 may be necessary to protect human health and the environment from
18 contamination of a source water supply used by a public water system
19 caused by a release of a regulated material from an industrial
20 aboveground storage tank; and

21 (17) The volume of regulated material that must be stored in
22 an industrial aboveground storage tank before such tank is subject
23 to regulation under this article, with such volume being established
24 by the secretary based on his or her assessment of the risk posed
25 by materials having a health hazard of two, three or four, as set
26 forth on the material safety data sheet applicable to such material,

1 or any other substance as determined by the National Fire Protection
2 Association or the secretary.

3 **§22-30-7. Powers and duties of secretary.**

4 (a) In addition to all other powers and duties prescribed in
5 this chapter or otherwise provided by law, and unless otherwise
6 specifically set forth in this article, the secretary has the sole
7 and exclusive authority to perform any and all acts necessary to
8 implement an industrial aboveground storage tank program consistent
9 with the requirements of this article.

10 (b) The secretary may receive and expend money from the
11 federal government or any other sources to implement the industrial
12 aboveground storage tank program required by this article.

13 (c) The secretary may revoke any registration provided for in
14 this article for any violation of this article or the legislative
15 rules promulgated hereunder.

16 (d) The secretary, in accordance with this article, may issue
17 orders, assess civil penalties, institute enforcement proceedings,
18 and prosecute violations of this article as the secretary determines
19 to be necessary and appropriate.

20 (e) The secretary, in accordance with this article, may order
21 corrective action to be undertaken, take corrective action, or
22 authorize a third party to take corrective action.

23 (f) The secretary may recover the costs of taking corrective
24 action, including those costs associated with authorizing third
25 parties to perform corrective action. These costs may not include
26 the cost of routine inspection and administrative activities not

1 associated with a release or threatened release of a regulated
2 material from an industrial aboveground storage tank.

3 **§22-30-8. Notification requirements.**

4 (a) Industrial aboveground storage tank owners and operators
5 shall notify the secretary of any industrial aboveground storage
6 tank placed into service on or after January 1, 2014, within thirty
7 days of such placement or by June 30, 2014, whichever is later, on
8 a form prescribed by the secretary. The notice shall specify the
9 date of tank installation, tank location, type of construction, size
10 and age of the tank, and the type and volume of regulated material
11 to be stored therein. If, at the time this information is required
12 to be submitted, the secretary has not prepared the form required
13 by this section, the owner shall nevertheless submit the information
14 in writing to the secretary.

15 (b) For an industrial aboveground storage tank that was in
16 existence, whether in service or out of service, prior to January
17 1, 2014, the owner or operator shall notify the secretary in writing
18 by June 30, 2014, specifying the date of tank installation, tank
19 location, type of construction, size and age of the tank, and the
20 type and volume of regulated material stored therein.

21 (c) A new owner of any industrial aboveground storage tank
22 shall notify the secretary in writing of the transfer of ownership
23 of any industrial aboveground storage tank. Upon the effective date
24 of the transfer, the new owner becomes subject to all provisions of
25 this article. The secretary may prescribe by emergency and
26 legislative rule the appropriate form and timing for the

1 notifications required by this section.

2 **§22-30-9. Registration.**

3 (a) Every owner of an industrial aboveground storage tank shall
4 register each industrial aboveground storage tank by completing and
5 submitting the form provided by the secretary and by paying the
6 annual registration fee prescribed by the secretary for each
7 industrial aboveground storage tank.

8 (b) It shall be unlawful for any owner or operator to operate
9 or use, in any way, any industrial aboveground storage tank which
10 has not been properly registered or for which the annual
11 registration fee has not been timely paid as required by this
12 section.

13 (c) It shall be unlawful for any person to approve a delivery
14 order, or deliver or deposit a regulated material into an industrial
15 aboveground storage tank unless the industrial aboveground storage
16 tank owner or operator provides proof of valid registration of the
17 industrial aboveground storage tank into which the regulated
18 material is delivered or deposited.

19 **§22-30-10. Annual inspection and certification by registered**
20 **professional engineer.**

21 (a) Every owner or operator of an industrial aboveground
22 storage tank shall be required to have an annual inspection of each
23 industrial aboveground storage tank performed by a registered
24 professional engineer and shall be required to submit, on a form
25 prescribed by rule by the secretary, a certification from a

1 registered professional engineer certifying that the industrial
2 aboveground storage tank, associated equipment, leak detection
3 systems, and secondary containment structures associated therewith
4 meet the minimum standards established by the secretary by emergency
5 and legislative rule for such structures.

6 (b) This certification form must be submitted to the secretary
7 by January 1st of each year, beginning January 1, 2015.

8 **§22-30-11. Financial responsibility.**

9 The secretary shall promulgate rules, as provided in this
10 article, containing requirements for owners and operators to provide
11 evidence satisfactory to the secretary of adequate financial
12 resources to undertake reasonable corrective action for releases of
13 regulated material from industrial aboveground storage tanks. The
14 means of demonstrating adequate financial responsibility may
15 include, but not be limited to, providing evidence of current
16 insurance, guarantee, surety bond, letter of credit, proof of
17 assets, trust fund or qualification as a self-insurer.

18 **§22-30-12. Performance standards.**

19 (a) The secretary shall propose legislative rules regarding
20 performance standards for new and existing industrial aboveground
21 storage tanks. The performance standards for new and existing
22 industrial aboveground storage tanks shall include, but not be
23 limited to, design, construction, installation, maintenance, repair,
24 release detection, and compatibility standards.

25 (b) New and existing industrial aboveground storage tank
26 construction standards must include at least the following

1 requirements:

2 (1) That an industrial aboveground storage tank will prevent
3 releases of regulated material stored therein that may occur as a
4 result of corrosion or structural failure for the operational life
5 of the tank;

6 (2) That an industrial aboveground storage tank will be
7 cathodically protected against corrosion, constructed of
8 noncorrosive material, steel clad with a noncorrosive material, or
9 designed in a manner to prevent the release or threatened release
10 of stored regulated material; and

11 (3) That materials used in the construction or lining of an
12 industrial aboveground storage tank are compatible with the
13 regulated material to be stored therein.

14 **§22-30-13. Corrective action.**

15 (a) Prior to the effective date of the emergency and
16 legislative rules promulgated pursuant to the authority granted
17 under this article, the secretary is authorized to:

18 (1) Require the owner or operator, as applicable, of an
19 industrial aboveground storage tank to undertake corrective action
20 with respect to any release or threatened release of a regulated
21 material from the industrial aboveground storage tank when the
22 secretary determines that corrective action shall be undertaken
23 promptly by the owner or operator thereof to protect human health
24 or the environment from contamination of a source water supply used
25 by a public water system caused by a release of a regulated material
26 from an industrial aboveground storage tank; or

1 (2) Undertake corrective action with respect to any release or
2 threatened release of a regulated material from an industrial
3 aboveground storage tank when, in the judgment of the secretary, the
4 action is necessary to protect human health or the environment from
5 contamination of a source water supply used by a public water system
6 caused by a release of a regulated material from an industrial
7 aboveground storage tank.

8 (b) The corrective action undertaken or required by this
9 section shall be such as may be necessary to protect human health
10 and the environment from contamination of a source water supply used
11 by a public water system caused by a release of a regulated material
12 from an industrial aboveground storage tank. The secretary shall
13 use funds in the Leaking Industrial Aboveground Storage Tank
14 Response Fund established pursuant to this article for payment of
15 costs incurred for corrective action taken by the secretary in
16 accordance with this article. In undertaking corrective actions
17 under this section and in issuing orders requiring owners or
18 operators to undertake such actions, the secretary shall give
19 priority to releases or threatened releases of regulated material
20 from industrial aboveground storage tanks that pose the greatest
21 threat to human health or the environment from contamination of a
22 source water supply used by a public water system.

23 (c) Following the effective date of rules promulgated pursuant
24 to this article, all actions or orders of the secretary shall be in
25 conformity with those rules. Further, following the effective date
26 of such rules, the secretary may undertake corrective action with

1 respect to any release or threatened release of a regulated material
2 from an industrial aboveground storage tank only if, in the judgment
3 of the secretary, the action is necessary to protect human health
4 or environment from contamination of a source water supply used by
5 a public water system, and one or more of the following situations
6 exists:

7 (1) If no person can be found within thirty days, or such
8 shorter period as may be necessary to protect human health or the
9 environment, who is an owner or operator of the industrial
10 aboveground storage tank at issue and who is capable of carrying out
11 the corrective action properly;

12 (2) A situation exists that requires prompt action by the
13 secretary under this section to protect human health or the
14 environment;

15 (3) The cost of corrective action to be expended on an
16 industrial aboveground storage tank exceeds the amount of resources
17 that the owner or operator can reasonably be expected to possess
18 based on the information required to be submitted pursuant to this
19 article and, considering the regulated material being stored in the
20 industrial aboveground storage tank in question, expenditures from
21 the Leaking Industrial Aboveground Storage Tank Response Fund are
22 necessary to assure an effective corrective action; or

23 (4) The owner or operator of the tank has failed or refused to
24 comply with an order of the secretary under this article or of the
25 environmental quality board under article one, chapter twenty-two-b
26 of this code to comply with appropriate corrective action measures

1 ordered by the secretary or the environmental quality board.

2 (d) The secretary may draw upon the Leaking Industrial
3 Aboveground Storage Tank Response Fund in order to take action under
4 subdivision (1) or (2), subsection (c) of this section if the
5 secretary has made diligent good faith efforts to determine the
6 identity of the party or parties responsible for the release or
7 threatened release of regulated material and:

8 (1) The secretary is unable to determine the identity of the
9 responsible party or parties in a manner consistent with the need
10 to take timely corrective action; or

11 (2) The party or parties determined by the secretary to be
12 responsible for the release or threatened release have been informed
13 in writing of the secretary's determination and have been requested
14 by the secretary to take appropriate corrective action but are
15 unable or unwilling to take proper action in a timely manner.

16 (e) The written notice to a responsible party must inform the
17 responsible party that if that party is subsequently found liable
18 for releases pursuant to this section, he or she will be required
19 to reimburse the Leaking Industrial Aboveground Storage Tank
20 Response Fund for the costs of the investigation, information
21 gathering, and corrective action taken by the secretary.

22 (f) If the secretary determines that immediate response to an
23 imminent threat to human health or the environment is necessary to
24 avoid substantial injury or damage thereto, corrective action may
25 be taken pursuant to this section without the prior written notice
26 required by subdivision (2), subsection (d) of this section. In

1 that case, the secretary must give subsequent written notice to the
2 responsible party within fifteen days after the action is taken
3 describing the circumstances that required the action to be taken
4 and setting forth the matters identified in subsection e of this
5 section.

6 **§22-30-14. Spill prevention response plan.**

7 (a) Within ninety days of the effective date of this article,
8 each owner or operator of an industrial aboveground storage tank
9 shall submit a spill prevention response plan for each industrial
10 aboveground storage tank. Owners and operators of industrial
11 aboveground storage tanks shall file updated plans required to be
12 submitted by this section no less frequently than every three years.
13 Each plan shall be site-specific, consistent with the requirements
14 of this article, and developed in consultation with county and
15 municipal emergency management agencies. The spill prevention
16 response plan shall contain, at a minimum, the following:

17 (1) Description of the facility - The plan shall identify and
18 describe the industrial or commercial activity that occurs at the
19 site and identify applicable hazard and process information,
20 including a specific listing and inventory of all types of regulated
21 materials stored, amount of regulated material stored, and wastes
22 generated that are stored in industrial aboveground storage tanks
23 at the facility. The plan shall include the material safety data
24 sheets (MSDS) for all regulated material in use or stored in
25 industrial aboveground storage tanks at the facility. The material
26 safety data sheets must include the health hazard number identified

1 by the National Fire Protection Association. The plan shall also
2 include drawings of the industrial aboveground storage tank
3 facility, including the locations of all drainage pipes and water
4 outlets;

5 (2) Description of the organizational structure for plan
6 implementation - The plan shall identify all facility-related
7 individuals and their duties and responsibilities for developing,
8 implementing, and maintaining the facility's plan. The plan shall
9 describe in detail the chain of command at the industrial
10 aboveground storage tank facility and list all facility emergency
11 coordinators and emergency response contractors;

12 (3) Spill leak prevention and response - The plan shall provide
13 a preventive maintenance program that includes monitoring and
14 inspection procedures, including identification of stress points,
15 employee training program(s), and security system(s). The plan
16 shall include a description of potential sources and areas where
17 spills and leaks may occur by drawings and plot plans and shall
18 identify specific spill prevention measures for those identified
19 areas;

20 (4) Countermeasures - The plan shall explain in detail the
21 specific response that industrial aboveground storage tank facility
22 and contract emergency personnel shall take upon the occurrence of
23 any release of a regulated material from an industrial aboveground
24 storage tank at the facility;

25 (5) Emergency spill control network - The plan shall include
26 pertinent information obtained by the owner or operator of the

1 industrial aboveground storage tank facility from the county and
2 municipal emergency management agencies and designate the person or
3 persons to be notified in the event of a release of a regulated
4 material from an industrial aboveground storage tank; and

5 (6) Other information - The owner or operator shall provide the
6 secretary with all other information requested by the secretary to
7 carry out his or her duties under this article.

8 (b) Each owner of an industrial aboveground storage tank with
9 an approved spill prevention response plan shall submit to the
10 secretary, a revised plan or addendum to the plan in accordance with
11 the requirements of this article if any of the following occur:

12 (1) There is a substantial modification in design,
13 construction, operation, or maintenance of any industrial
14 aboveground storage tank or associated equipment, or there are other
15 circumstances that increase the potential for fires, explosions or
16 releases of regulated material;

17 (2) There is a substantial modification in emergency equipment
18 at the facility;

19 (3) There are substantial changes in emergency response
20 protocols at the industrial aboveground storage tank facility;

21 (4) The plan fails in an emergency;

22 (5) The removal or the addition of any industrial aboveground
23 storage tank; or

24 (6) Other circumstances occur about which the secretary
25 requests an update.

1 (c) The secretary shall approve the spill prevention response
2 plan or reject the plan and require such modifications as may be
3 necessary and reasonable to assure the protection of the source
4 water of a public water system from a release of a regulated
5 material from an industrial aboveground storage tank. If rejected,
6 the owner of the industrial aboveground storage tank shall submit
7 a revised plan to the secretary for approval within thirty days of
8 receipt of notification of the secretary's decision.

9 Failure to comply with a plan approved by the secretary
10 pursuant to this section shall constitute a violation of this
11 article.

12 (d) Nothing contained in this section relieves the owner or operator
13 of an industrial aboveground storage tank from his or her obligation
14 to report any release immediately to the department of environmental
15 protection's emergency notification telephone number, 1-800-642-
16 3074.

17 **§22-30-15. Notice to local governments, water companies, and other**
18 **industrial users.**

19 The owner or operator of an industrial aboveground storage tank
20 facility shall annually provide public notice to public water
21 systems located within a twenty-five mile radius of the industrial
22 aboveground storage tank facility site and the local municipality,
23 if any, and county in which the facility is located. The notice
24 shall provide a detailed inventory of the type and quantity of
25 regulated material stored in industrial aboveground storage tanks
26 at the facility and the material safety data sheets associated with

1 the regulated material in storage. The owner or operator shall also
2 annually provide a copy of the spill prevention response plan and
3 any updates thereto, which have been approved by the secretary
4 pursuant to this article, to the applicable public water systems and
5 county and municipal emergency management agencies.

6 **§22-30-16. Required signage.**

7 Every industrial aboveground storage tank shall have
8 prominently posted signage thereupon disclosing the contents of the
9 tank and the hazards, if any, associated with the regulated material
10 stored therein. If the industrial aboveground storage tank is
11 empty, the signage shall so state. For the purposes of this
12 section, the requirements for prominently posted signage shall be
13 specified in the rules promulgated by the secretary pursuant to this
14 article and article three, chapter twenty-nine-a of this code.

15 **§22-30-17. Industrial aboveground storage tank administrative**
16 **fund.**

17 (a) The secretary shall collect annual registration fees from
18 owners or operators of each industrial aboveground storage tanks in
19 an amount sufficient to cover the regulatory oversight and services
20 to be provided by designated agencies, including necessary technical
21 and administrative personnel, as provided in legislative rules
22 promulgated by the secretary pursuant to this article. All
23 registration fees and the net proceeds of all fines, penalties, and
24 forfeitures collected under this article, including accrued
25 interest, shall be paid into the State Treasury into a special

1 revenue fund designated the "Industrial Aboveground Storage Tank
2 Administrative Fund," and shall be used solely to defray the cost
3 of administering this article.

4 (b) At the end of each fiscal year, any unexpended balance,
5 including accrued interest, on deposit in the Industrial Aboveground
6 Storage Tank Administrative Fund shall not be transferred to the
7 general revenue fund, but shall remain in the Industrial Aboveground
8 Storage Tank Administrative Fund.

9 **§22-30-18. Leaking industrial aboveground storage tank response**
10 **fund.**

11 (a) Each industrial aboveground storage tank owner or operator
12 within this state shall pay an annual fee to establish a fund to
13 assure adequate response to leaking industrial aboveground storage
14 tanks. The amount of fees assessed pursuant to this section shall
15 be specified in legislative rules promulgated in pursuant to this
16 article. The fees must be sufficient to cover the regulatory
17 oversight and services to be provided by designated agencies,
18 including necessary technical and administrative personnel. The
19 proceeds of the assessment shall be paid into the State Treasury
20 into a special fund designated the "Leaking Industrial Aboveground
21 Storage Tank Response Fund."

22 (b) Each owner or operator of an industrial aboveground storage
23 tank subject to a fee assessment under subsection (a) of this
24 section shall pay a fee based on the number of industrial
25 aboveground storage tanks he or she owns or operates, as applicable.
26 The secretary shall vary the fees annually to a level necessary to

1 produce a sufficient fund at the beginning of each calendar year.

2 (c) At the end of each fiscal year, any unexpended balance,
3 including accrued interest, on deposit in the Leaking Industrial
4 Aboveground Storage Tank Response Fund shall not be transferred to
5 the general revenue fund, but shall remain in the Leaking Industrial
6 Aboveground Storage Tank Response Fund.

7 (d) The secretary may enter into agreements and contracts and
8 to expend the moneys in the fund for the following purposes:

9 (1) Responding to industrial aboveground storage tank releases
10 when, based on readily available information, the secretary
11 determines that immediate action is necessary to prevent or mitigate
12 significant risk of harm to human health or the environment from
13 contamination of a source water supply used by a public water system
14 caused by a release of regulated material from industrial
15 aboveground storage tanks in situations for which no federal funds
16 are immediately available for the response, cleanup or containment:
17 *Provided*, That the secretary shall apply for and diligently pursue
18 all available federal funds at the earliest possible time.

19 (2) Reimbursing any non-responsible parties for reasonable
20 cleanup costs incurred with the authorization of the secretary in
21 responding to an industrial aboveground storage tank release of
22 regulated material.

23 (3) Reimbursing any non-responsible parties for reasonable
24 costs incurred with the authorization of the secretary responding
25 to perceived, potential or threatened releases of regulated material
26 from industrial aboveground storage tanks.

1 (e) The secretary, through a cooperative agreement with another
2 state regulatory agency, in this or another state, may use the fund
3 to compensate the cooperating agency for expenses the cooperating
4 agency incurs in carrying out regulatory responsibilities that
5 agency may have over an industrial aboveground storage tank facility
6 regulated pursuant to this article.

7 **§22-30-19. Public Access to Information.**

8 (a) Subject to the exemptions listed in section four, article
9 one, chapter twenty-nine-b of this code, the public shall have
10 access to all documents and information submitted to the agency in
11 accordance with this section pursuant to the state Freedom of
12 Information Act.

13 (b) Any records, reports or information obtained from any
14 persons under this article may be disclosed to other officers,
15 employees, or authorized representatives of this state or the United
16 States environmental protection agency or of this state if the
17 officers, employees or authorized representatives are implementing
18 the provisions of this article or any other applicable law related
19 to releases of regulated material from industrial aboveground
20 storage tanks that impact the source water supply used by a public
21 water system.

22 (c) In submitting data under this article, a person required
23 to provide the data may designate the data that he or she believes
24 is entitled to protection under this section and may submit the
25 designated data separately from other data submitted under this

1 article. A designation under this subsection shall be made in
2 writing and in a manner as the secretary may prescribe.

3 **§22-30-20. Inspections, monitoring and testing.**

4 (a) For the purposes of developing or assisting in the
5 development of any rule, conducting any study, taking any corrective
6 action or enforcing any provision of this article, any owner or
7 operator of an industrial aboveground storage tank shall, upon
8 request of the secretary, furnish information relating to the
9 industrial aboveground storage tanks; their associated equipment and
10 contents; conduct reasonable monitoring or testing; permit the
11 secretary, at all reasonable times, to have access to and to copy
12 all records relating to the industrial aboveground storage tanks;
13 and permit the secretary to have access to the industrial
14 aboveground storage tank for corrective action.

15 (b) For the purposes of developing or assisting in the
16 development of any rule, conducting any study, taking corrective
17 action or enforcing any provision of this article, the secretary
18 may:

19 (1) Enter at any time any establishment or other place where
20 an industrial aboveground storage tank is located;

21 (2) Inspect and obtain samples of any regulated material
22 contained in an industrial aboveground storage tank from any person;

23 (3) Conduct monitoring or testing of the industrial aboveground
24 storage tanks, associated equipment, contents or surrounding soils,
25 surface, water or groundwater; and

26 (4) Take corrective action as specified in this article.

1 Each inspection shall be commenced and completed with reasonable
2 promptness.

3 **§22-30-21. Administrative orders; injunctive relief.**

4 (a) Whenever the secretary determines, on the basis of any
5 information, that any person is in violation of any requirement of
6 this article or the rules promulgated thereunder, the secretary may
7 issue an order stating with reasonable specificity the nature of the
8 violation and requiring compliance within a reasonable specified
9 time period, or the secretary may commence a civil action in the
10 circuit court of the county in which the violation occurred or in
11 the circuit court of Kanawha County for appropriate relief,
12 including a temporary or permanent injunction. The secretary may,
13 except as provided in subsection (b) of this section, stay any order
14 he or she issues upon application, until the order is reviewed by
15 the environmental quality board.

16 (b) In addition to the powers and authority granted to the
17 secretary by this chapter to enter into consent agreements,
18 settlements, and otherwise enforce this chapter, the secretary shall
19 propose rules for legislative approval, in accordance with article
20 three, chapter twenty-nine-a of this code, to establish a mechanism
21 for the administrative resolution of violations set forth in this
22 article through consent order or agreement as an alternative to
23 instituting a civil action.

24 **§22-30-22. Civil and criminal penalties.**

25 (a) Any person who fails to comply with an order of the
26 secretary issued under subsection (a), section twenty-two of this

1 article within the time specified in the order is liable for a civil
2 penalty of not more than \$25,000 for each day of continued
3 noncompliance.

4 (b) Any owner or operator of an industrial aboveground storage
5 tank who knowingly fails to register an industrial aboveground
6 storage tank or submits false information pursuant to this article
7 is liable for a civil penalty not to exceed \$10,000 for each
8 industrial aboveground storage tank that is not registered or for
9 which false information is submitted.

10 (c) Any owner or operator of an Industrial Aboveground Storage
11 Tank who fails to comply with any requirement of this article or any
12 standard promulgated by the secretary pursuant to this article is
13 subject to a civil penalty not to exceed \$10,000 for each day of
14 violation.

15 (d) Any person who fails to comply with any requirement of
16 section five of this article or any standard promulgated by the
17 secretary pursuant to that section is subject to a civil penalty not
18 to exceed \$10,000.

19 (e) Any person who knowingly and intentionally violates any
20 provision of this article shall be guilty of a misdemeanor, and,
21 upon conviction thereof, shall be confined in the penitentiary for
22 a period of time not exceeding one year, and be fined an amount not
23 to exceed \$25,000.

24 **§22-30-23. Appeal to environmental quality board.**

25 Any person aggrieved or adversely affected by an order of the
26 secretary made and entered in accordance with the provisions of this

1 article may appeal to the environmental quality board, pursuant to
2 the provisions of article one, chapter twenty-two-b of this code.

3 **§22-30-24. Duplicative enforcement prohibited.**

4 No enforcement proceeding brought pursuant to this article may
5 be duplicated by an enforcement proceeding subsequently commenced
6 under some other article of this code with respect to the same
7 transaction or event, unless such subsequent proceeding involves the
8 violation of a permit or permitting requirement of such other
9 article.

10 **§22-30-25. Reporting and accountability.**

11 (a) Every three years, the secretary shall submit a report to
12 the Legislature which assesses the effectiveness of this article and
13 provides such other information as may be requested by the
14 Legislature to allow it to assess the effectiveness of this article,
15 including without limitation the secretary's observations concerning
16 all aspects of compliance with this article and any legislative
17 rules promulgated pursuant hereto, the regulatory process, and any
18 pertinent changes to federal rules or regulations.

19 (b) The secretary shall keep accurate accounts of all receipts
20 and disbursements related to the administration of the Industrial
21 Aboveground Storage Tank Administrative Fund and shall make a
22 specific annual report addressing the administration of the fund.

23 (c) The secretary shall keep accurate accounts of all receipts
24 and disbursements related to the administration of the Leaking
25 Industrial Aboveground Storage Tank Response Fund and shall make a
26 specific annual report addressing the administration of the fund.

1 **§22-30-26. Interagency cooperation.**

2 (a) In implementation of this article, the secretary shall
3 coordinate with the state department of health and human resources,
4 the West Virginia public service commission, and local health
5 departments to ensure the successful planning, implementation,
6 emergency notification and response, corrective action, and
7 enforcement relating to this article, including consideration of the
8 role of those agencies in providing services to owners and operators
9 of industrial aboveground storage tanks and public water systems.

10 (b) The secretary shall also coordinate with state and local
11 emergency response agencies to prepare and issue appropriate
12 emergency response plans to address facility emergency response and
13 incident command when such functions are provided by the owner or
14 operator of the industrial aboveground storage tank and the public
15 water system.

16 (c) The secretary shall also coordinate with the state fire
17 marshal in addressing the periodic inspection of local fire
18 departments to include a requirement for inspectors to examine and
19 identify the status of National Incident Management System fire
20 department personnel training.

21 **§22-30-27. Imminent and substantial endangerment.**

22 (a) Notwithstanding any other provision in this chapter, upon
23 receipt of evidence that an industrial aboveground storage tank may
24 present an imminent and substantial endangerment to human health or
25 the environment, the secretary may bring suit on behalf of the State
26 of West Virginia in the Circuit Court of Kanawha County against any

1 owner or operator of an industrial aboveground storage tank who has
2 contributed or who is contributing to such imminent and substantial
3 endangerment to public health or the environment to order such
4 person to take such action as may be necessary to abate the
5 situation and protect public health and the environment from
6 contamination of a source water supply of a public water system
7 caused by a release of a regulated material from an industrial
8 aboveground storage tank.

9 (b) Upon receipt of information that there is any industrial
10 aboveground storage tank that presents an imminent and substantial
11 endangerment to human health or the environment, the secretary shall
12 provide immediate notice to the appropriate state and local
13 government agencies and public water system. In addition, the
14 secretary shall require notice of such endangerment to be promptly
15 posted at the industrial aboveground storage tank facility
16 containing the industrial aboveground storage tank at issue.

17 **§22-30-28. Severability.**

18 If any provision of this article or its application to any
19 person or circumstance is held invalid, the invalidity shall not
20 affect the other provisions or applications of this article which
21 can be given effect without the invalid provision or application,
22 and to this end the provisions of this article are severable.

23

NOTE: The purpose of this bill is to create a source water protection program and an industrial aboveground storage tank program to protect source water supplies and systems.

This article is completely new; therefore, underscoring has been omitted.